

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
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4 MANDAN, INC.,)
5 Appellant,) Docket No. 1853-01-S
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW

10 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
11 having taken the matter under advisement, finds and concludes as follows:

12 FINDINGS OF FACT

13 Mandan, Inc. ("Appellant") is an Arizona corporation engaged in the business of general
14 contracting. The Arizona Department of Revenue (the "Department") audited Appellant for the period
15 August 1994 through June 1998 and determined that Appellant was liable for transaction privilege tax on
16 receipts attributable to five contracts with the federal government for work performed on Indian
17 Reservations.¹ Subsequently, the Department issued an assessment, including penalties and interest,
18 against Appellant. Appellant timely protested the assessment to an administrative law judge who abated
19 the penalties, but otherwise upheld the assessment. Appellant then protested to the Director of the
20 Department who upheld the administrative law judge's decision. Appellant now timely appeals to this
21 Board.

22 Previously, Appellant had filed amended returns and claimed a refund for the period April 1985
23 through September 1986 for construction work performed on Indian reservations for the Hopi Housing
24 Authority and the Bureau of Indian Affairs. The Department granted that refund request.

25 Thereafter, the Department audited Appellant for the period November 30, 1986 through July 31,
1990. The Department initially assessed tax on all work performed by Appellant on Indian Reservations

¹ Appellant entered into two contracts with the Bureau of Indian Affairs (one for a school renovation and one for a police station), one contract with the Navajo Area Indian Health Service, one with the Phoenix Area Indian Health Service and one with the Department of Health and Human Services.

1 pursuant to contracts with non-Indians. Appellant protested the entire assessment. The Department
2 subsequently agreed to amend the assessment to exclude four jobs performed for Indian Health Services
3 and the Bureau of Indian Affairs. Appellant protested the remaining assessment and a formal hearing
4 was held. The parties eventually entered into a closing agreement.

5 In 1999, The United States Supreme Court issued a unanimous decision upholding a state's
6 ability to tax income from activities performed on an Indian reservation pursuant to a contract between a
7 contractor and the United States government. *Arizona v. Blaze Constr. Co.*, 526 U.S. 32 (1999). The
8 Court applied its decision retroactively to Blaze Construction Company for the period June 1986 through
9 August 1990.

10 DISCUSSION

11 The issue before the Board is whether Appellant is liable for transaction privilege tax assessed for
12 the period August 1994 through June 1998 on construction contracts with agencies of the federal
13 government for projects on Indian reservations for the use and benefit of Indian Tribes and their
14 members. Appellant bears the burden of proof as to all issues of fact. A.A.C. R16-3-118.

15 The United States Supreme Court's 1999 decision in *Blaze* clearly establishes that contracts, like
16 those at issue, between a contractor and the federal government to perform work on an Indian
17 reservation are taxable. Appellant argues that the decision should apply prospectively only. However,
18 the Court applied its decision in *Blaze* to the taxpayer retroactively. Further, the Court has specifically
19 held that

20 "When this Court applies a rule of federal law to the parties before it, that
21 rule is the controlling interpretation of federal law and must be given full
22 retroactive effect in all cases still open on direct review as to all events,
23 regardless of whether such events predate or postdate our
24 announcement of the rule."

25 *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993). Only the United States Supreme Court can
decide whether to apply one of its decisions retroactively. It expressly did so in *Blaze*.

Appellant next argues that the Department is estopped from assessing the tax at issue in the first
place. Estoppel is, basically, a legal doctrine whereby one's conduct precludes one from asserting rights
against another who has justifiably and detrimentally relied (i.e. suffered an injury) upon the conduct.
Estoppel may lie against the Department only under certain limited circumstances. *Valencia Energy Co.
v. Arizona Dep't of Rev.*, 191 Ariz. 565, 959 P.2d 1256 (1998). Appellant must establish all three required

1 elements of estoppel. These elements are "(1) the party to be estopped commits acts inconsistent with a
2 position it later adopts; (2) reliance by the other party; and (3) injury to the latter resulting from the
3 former's repudiation of its prior conduct." *Id.* 191 at 576-577, 959 P.2d at 1267-1268.

4 Appellant argues that the Department's actions in the prior refund and audit proceedings involving
5 Appellant constitute the Department's formalized position that contracts like the ones at issue are not
6 taxable. Appellant claims it relied on this position and did not collect transaction privilege tax on the
7 contracts. Accordingly, Appellant argues that it reasonably relied on the Department's position, to its
8 detriment, and, therefore, the Department is estopped from assessing transaction privilege tax now.
9 *Valencia Energy Co. v. Arizona Dep't of Rev.*, 191 Ariz. 565, 959 P.2d 1256 (1998).

10 The Board disagrees. The Department's decision not to fight a refund claim or a protested
11 assessment, or its decision to negotiate or settle with a taxpayer does not constitute its formal position on
12 a particular issue. The Department has limited resources. Using its discretion and strategically choosing
13 to contest some actions and not others does not rise to the level of formality required for estoppel.
14 Because Appellant has not established the first element of estoppel in this case, it is unnecessary to
15 consider the presence of the other elements. Estoppel does not lie against the Department in this case.
16 Therefore, Appellant is liable for the tax assessed. The interest at issue is made a part of the tax by
17 statute and represents a reasonable interest rate on the tax due, therefore, it may not be abated. A.R.S.
18 § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

19 CONCLUSIONS OF LAW

20 1. Appellant is liable for the tax at issue. See *Arizona v. Blaze Constr. Co.*, 526 U.S. 32 (1999).
21 *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993).

22 2. Estoppel does not lie against the Department in this case. *Valencia Energy Co. v. Arizona*
23 *Dep't of Rev.*, 191 Ariz. 565, 959 P.2d 1256 (1998).

24 3. Because the interest at issue is made a part of the tax by statute and represents a reasonable
25 interest rate on the tax due, it may not be abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286, 30
P.2d 841 (1934).

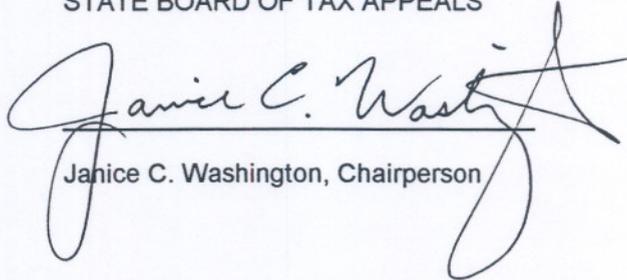
ORDER

THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
Department is affirmed.

1 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
2 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

3 DATED this 20th day of November, 2001.

4 STATE BOARD OF TAX APPEALS

5 
6 Janice C. Washington, Chairperson

7
8 JCW:ALW

9 CERTIFIED

10 Copies of the foregoing
11 mailed or delivered to:

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